

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|----------------------|---|-------------------------|
| LESTER PATTERSON, |) | |
| |) | |
| Plaintiff, |) | Civil Action No. 23-295 |
| |) | |
| v. |) | |
| |) | |
| |) | Judge Cathy Bissoon |
| PROGRESSIVE ADVANCED |) | |
| INSURANCE CO., |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM ORDER

I. MEMORANDUM

Defendant’s Motion for Partial Summary Judgment (Doc. 29) will be denied.

The Court finds Progressive failed to carry its burden of demonstrating there is no genuine issue as to whether Plaintiff Lester Patterson did not suffer a “serious impairment of body function,” 75 Pa. C.S.A. §§ 1702, 1705(d), caused by the June 16, 2021 automobile accident. Progressive asserts that there is no genuine dispute as to whether Plaintiff’s injury was serious or causally related to the auto accident, pointing to, *inter alia*, that Plaintiff is not only better off than prior to the accident but also attributes any current back injury with his long history of back issues specifically related to the same L4-5 herniation. *See* Pl.’s Memo. Law (Doc. 31) at 1–6. Progressive also points to post-accident records allegedly showing only degenerative changes and evidence of Plaintiff not receiving active treatment for his back injury over the past one and half years. *See id.* However, both sides have presented expert reports and opinions attacking the other’s adequacy to prove whether the accident caused further harm to Plaintiff.¹ It is clear to the Court that this fact-intensive issue must be submitted to the jury.

¹ Progressive asserts Plaintiff’s expert, Dr. Derek Thomas, allegedly was never provided Plaintiff’s past medical records prior to rendering his opinion. *See* Pl.’s Memo. Law 13; Pl.’s

Moreover, and although scant as to the impact the alleged injury has on Plaintiff today, the Court finds that Plaintiff put forth sufficient evidence to persuade a reasonable jury that he suffered a “serious impairment of body function” caused by the June 16, 2021 automobile accident.² *See* Pl.’s Resp. (Doc. 33) at 2–3 (citing Def.’s App. A; Pl.’s Apps. 1, 5).

II. ORDER

For these reasons, Progressive’s Motion for Partial Summary Judgment (**Doc. 29**) on the issue of non-economic damages is **DENIED**. Accordingly, the case shall proceed to trial, and the Court shall issue a Final Pretrial Order in due course.

IT IS SO ORDERED.

June 29, 2024

s/Cathy Bissoon
Cathy Bissoon
United States District Judge

cc (via ECF email notification):
All Counsel of Record

Reply (Doc. 34) at 3. This attack, however, goes to the weight of the evidence not its admissibility.

² Plaintiff put forth evidence to satisfy the two-step inquiry as to whether he suffered a serious injury. Specifically, for the first step, Plaintiff offered evidence of lower back injuries and testimony that he is unable to do basic household chores, ride in a vehicle for more than two and a half hours and needs to take additional medication. *See* Pl.’s Resp. 1–3, 23 (citing Def.’s App. A). Plaintiff also offers evidence that his expert, Dr. Thomas, opined that he would need additional care and future surgery caused by the automobile accident. *See id.* at 3, 33–35. As to the second step, Plaintiff also presented evidence that the impairment of his body function was serious. He put forth evidence that he underwent surgery in December 2021, submitted his treating physician’s note allegedly tying the car accident to his back injury, testified to ongoing headaches, cervical, thoracic, and lumbar pain, and that he may be subject to future surgeries. *See id.* at ¶¶ 52–65 (citing Pl.’s Apps. 1, 5); *see also* Pl.’s Concise Statement Facts (Doc. 32) at ¶ 65 (citing Pl.’s App. 5, p. 9) (“He was involved in a motor vehicle accident in June which seemed to exacerbate the symptoms.”). Viewing this evidence in a light most favorable to Plaintiff, a reasonable jury could find Plaintiff’s injury was serious and caused by the June 2021 automobile accident.